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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,973	08/29/2000	Norbert George Vogl	YOR920000532US1	9168

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HARRINGTON & SMITH, LLP
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Shelton, CT 06484-6212

EXAMINER

BAROT, BHARAT

ART UNIT	PAPER NUMBER
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2155

MAIL DATE	DELIVERY MODE
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07/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/649,973

Applicant(s)

VOGL ET AL.

Examiner

Bharat N. Barot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22, 24, 25, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 24-25, and 27-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

1. Amended claims 1-19, 24-25, and 27-28 remain for further examination.

The new grounds of rejection

2. Applicants' amendments and arguments with respect to claims 1-19, 24-25, and 27-28 filed on April 18, 2007 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-11, 16-19, 24-25, and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (U.S. Patent No. 5,903,724) in view of Crisler et al (U.S. Patent No. 5,515,379) and Rodriguez et al (U.S. Patent No. 6,986,156).
5. As to claim 1, Takamoto et al teach a method of doing business over a network (see abstract; and figures 1-2), comprising: receiving a request for transmitting digital information, the digital information corresponding to a number of packets; determining an estimated time required to transmit the digital information; scheduling a transmit time for the digital information; and accepting the digital information for transmission (figures

2, 9, and 15-17; column 6 line 65 to column 7 line 10; column 8 lines 13-36; and column 11 line 22 to column 12 line 54).

However, Takamoto et al do not teach the steps of: receiving, determining, scheduling, and accepting with specific conditions.

Crisler et al teach a method of doing business over a network (see abstract; figure 1; and column 2 line 50 to column 3 line 49), comprising: receiving a request for transmitting digital information, the request comprising an identification of a user and transmission constraints including a start time and an end time (request for N-time slots having time after transmission begin and time at transmission completed), the digital information corresponding to a number of packets (figures 2-3; column 3 line 50 to column 4 line 28; and column 5 lines 8-55); determining an estimated time required to transmit the digital information based on the number of packets and a network speed; scheduling a transmit time for the digital information (figures 2-3; column 4 lines 29-57; and column 5 line 44 to column 6 line 7); accepting the digital information for transmission only if the estimated time required to transmit is less than or equal to a difference between the transmit time and the end time (N-time slots presently available); and in response to the digital information being accepted for transmission, transmitting the digital information using the network after the start time and prior to the end time (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Crisler et al stated above in the method of Takamoto et al for doing business over a network as stated above because it

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would have optimized network performance and increased system efficiency by scheduling a transmit time for the digital information.

Neither Takamoto et al nor Crisler et al teaches that determining a cost for transmitting the digital information based at least on the transmission constraints, the estimated time required to transmit, and the transmit time; accepting the digital information for transmission if the determined cost is less than or equal to a maximum cost associated with the user; and in response to the digital information being accepted for transmission, billing the determined cost to an account associated with the user.

Rodriguez et al teach that determining a cost for transmitting the digital information (VOD service) (figure 4; and column 13 lines 28-60); accepting the digital information for transmission if the determined cost is less than or equal to a maximum cost associated with the user (column 14 lines 37-52); and in response to the digital information being accepted for transmission, billing the determined cost to an account associated with the user (figure 4; and column 13 lines 38-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Rodriguez et al stated above in the method of Takamoto et al and Crisler et al for doing business over a network as stated above because it would have optimized network performance, increased system efficiency by scheduling a transmit time for the digital information, and improved system management to determine the cost of network usage.

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6. As to claim 2, Rodriguez et al teach that the digital information is transmitted at the cost (column 13 lines 15-47).

7. As to claim 3, Crisler et al teach that the digital information is rejected for transmission if the estimated time required to transmit is more than the difference between the transmit time and the end time (figures 2-3; column 4 lines 29-57; and column 5 lines 44-55). Note: Applicant claimed two limitations (conditions) with or operator, and reference teaches one limitation; therefore, reference teaches the claimed limitations.

8. As to claims 4-5; Rodriguez et al teach that determining a second network having a suitable second cost determined to allow transmission of the digital information over the second network, accepting the digital information for transmission over the second network at the second cost, and billing the determined cost further comprises billing the second determined cost to the account; and the digital information is rescheduled for a second time and accepted for transmission at a second cost after the digital information is rejected (figures 2-3; column 14 line 52 to column 15 line 2; column 17 lines 11-29; column 18 lines 1-28; column 22 lines 7-11 and 42-54; and column 23 lines 1-7).

9. As to claims 6-7 and 28, Takamoto et al disclose that receives an acknowledgment of the transmission (see summary of the invention; figures 2-3; and column 7 lines 10-63).

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However, Takamoto et al do not disclose that produces a bill on receipt of the acknowledgment or transmission of the digital information, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment or transmission of the digital information (after providing a service) because it would have improved system management to determine the cost of network usage. Note: Applicant claimed two or more limitations with at least one phrase, and reference teaches one limitation set above; therefore, reference teaches the claimed limitations.

10. As to claims 8-10, Takamoto et al disclose that one or more portions of the digital information are accepted for transmission and are transmitted; and receives an acknowledgment of the transmission of one or more of the portions (see summary of the invention; figures 2-3; and column 7 lines 10-63).

However, Takamoto et al do not disclose that produces a bill on receipt of the acknowledgment for one or more of the portions, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment for one or more of the portions (after providing a service) because it would have improved system management to determine the cost of network usage.

11. As to claim 11, Takamoto et al disclose that one or more portions of the digital information are initially rejected and then accepted for transmission at one or more

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second times and at one or more second costs (figures 18-20; and column 12 line 55 to column 14 line 10).

12. As to claim 16, Crisler et al disclose that the digital information is scheduled for one or more retransmissions if the estimated time required to transmit is more than the difference between the estimated transmit time and the end time (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27).

13. As to claim 17, Takamoto et al disclose that the digital information is scheduled for one or more retransmissions if no acknowledgment of the transmission of the digital information is received (figures 18-20; and column 12 line 55 to column 14 line 10).

14. As to claims 18-19, Crisler et al disclose that the digital information is also not transmitted if one or more criteria are not met, where the criteria include any one or more of the following: a file size, a release time, a deadline, zero or more recipients, zero or more user locations, an acknowledgment, a negative acknowledgment, a partial acknowledgment, a bandwidth, a quality of service, a retransmission count, and a retransmission schedule (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27). Note: Applicant claimed two or more limitations with any one or more phrase, and reference teaches one limitation state above; therefore, reference teaches the claimed limitations.

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15. As to claims 24-25, Rodriguez et al teach that the request includes an account identifier receiving from the client regarding how the client can be billed and billing the determined cost to the account identified by the account identifier (column 13 lines 28-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Rodriguez et al stated above in the method of Takamoto et al and Crisler et al for doing business over a network as stated above because it would have improved billing process and reduced system management overhead.

16. As to claims 27, Rodriguez et al teach that the managing the maximum cost and retransmitting the digital information in response to a determination that the transmission was unsuccessful (column 13 line 48 to column 14 line 51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Rodriguez et al stated above in the method of Takamoto et al and Crisler et al for doing business over a network as stated above because it would have improved billing process and reduced system management overhead.

17. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (U.S. Patent No. 5,903,724) in view of Crisler et al (U.S. Patent No. 5,515,379) and Rodriguez et al (U.S. Patent No. 6,986,156) as applied to claim 1 above, and further in view of Duquesnois et al (U.S. Patent No. 6,564,382).

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18. As to claims 12-13, neither Takamoto et al nor Crisler et al discloses that the request has one or more priorities; the priority is that the digital information is transmitted within a time period.

Duquesnois et al disclose that the request has one or more priorities; the priority is that the digital information is transmitted within a time period (see abstract; column 2 lines 1-14 and 38-59; column 4 lines 44-52; and column 8 lines 5-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Duquesnois et al stated above in the method of Takamoto et al for doing business over a network as stated above because it would have increased over all system efficiency and performance.

19. As to claims 14-15, Duquesnois et al disclose that the time period in any one or more of the following: over night, two days, and one week, and the priority is a freight priority that requires the digital information to be transmitted within a freight time period with no acknowledgments (see abstract; column 2 lines 1-14 and 38-59; column 4 lines 44-52; and column 8 lines 5-21).

NON-STATUTORY DOUBLE PATENTING

20. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application, See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

OBVIOUSNESS-TYPE DOUBLE PATENTING

21. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,150,017 in view of Rodriguez et al (U.S. Patent No. 6,986,156).

Although the conflicting claim is not identical, it is not patentably distinct from each other because claim 1 of U.S. Patent No. 7,150,017 recited all claimed limitations of the instant application claim 1 except that determining a cost for transmitting the digital information based at least on the transmission constraints, the estimated time required to transmit, and the transmit time; accepting the digital information for transmission if the determined cost is less than or equal to a maximum cost associated

with the user; and in response to the digital information being accepted for transmission, billing the determined cost to an account associated with the user.

Rodriguez et al teach that determining a cost for transmitting the digital information (VOD service) (figure 4; and column 13 lines 28-60); accepting the digital information for transmission if the determined cost is less than or equal to a maximum cost associated with the user (column 14 lines 37-52); and in response to the digital information being accepted for transmission, billing the determined cost to an account associated with the user (figure 4; and column 13 lines 38-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Rodriguez et al stated above in the method of claim 1 of U.S. Patent No. 7,150,017 for doing business over a network as stated above because it would have optimized network performance, increased system efficiency by scheduling a transmit time for the digital information, and improved system management to determine the cost of network usage.

Response to Arguments

22. Applicants' amendments and arguments with respect to claims 1-19, 24-25, and 27-28 filed on April 18, 2007 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

Applicant's arguments have been fully considered. The examiner has attempted to answer (response) to the remarks (arguments) in the body of the Office action.

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23. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact Information

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bharat Barot** whose Telephone Number is **(571) 272-3979**. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:00 PM and Friday 7:00 AM to 11:00 AM. Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number **(571) 273-8300**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Saleh Najjar**, can be reached at **(571) 272-4006**.

Patent Examiner Bharat Barot

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May 31, 2007


BHARAT BAROT
PRIMARY EXAMINER